

Indigenous employment and Enterprise Agreements in Australian universities

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Considering the benefits that enterprise agreements (EAs) can bring to Indigenous employees, this paper considers the question of whether respectful cultural policies that are aligned with reconciliation and included in EAs can be achieved to Close the Gap on reducing Indigenous disadvantage. A document analysis of EAs at eight Australian universities was conducted to conceptualise and compare information about Indigenous staff needs and remuneration. A number of specific sections relating to Indigenous employment and leave arrangements were identified.

Introduction

Enterprise bargaining agreements, the colloquial name given to enterprise agreements (EAs), were regulated again under the *Fair Work Act 2009* to create improvements in workplace employment (Commonwealth of Australia, 2011). Enterprise bargaining agreements were first introduced in 1991 under the Prices and Income Accord Mark VII by the Hawke Labor Government (ACTU, 1993). The National Tertiary Education Union (NTEU) National Indigenous Claim was first introduced in Round 3 bargaining in 2000 (NTEU National Council 99, 1999). Because the EAs can make allowances for differences in cultural needs, improvements offered potential employment opportunities for Indigenous people. In addition, they can contribute to each institution's commitment to Indigenous Australian people's cultural obligations (Taylor, Gray, Boyd, Yap & Lahn, 2012). EAs document the terms

and conditions of employment for an organisation's staff, including pay rates, penalties, allowances, standard hours, leave, deductions and issues concerning the relationship between the employer and the staff (Commonwealth of Australia, 2011).

Since 2010, the Fair Work Commission has approved EAs once it is satisfied they passed the 'better off overall' test. This test ensures that each staff member or prospective staff member would be better off under an EA than under the generic provisions of a modern award (Commonwealth of Australia, 2011).

A document analysis of eight Australian Round 5 EAs in Australian tertiary institutions was conducted to conceptualise and compare information (Starks & BrownTrinidad, 2007) regarding Indigenous staff needs and remuneration. The aim of this study was to consider the benefits that EAs bring to Indigenous employees. The research examined any reference to Indigenous rights and benefits

within EAs. It also explored any discourse reflected in the selected EAs and how they support or hinder the cultural values and obligations of Indigenous people.

The Council of Australian Governments (COAG) membership comprises the prime minister, state premiers, territory chief ministers and the president of the Australian Local Government Association; it is the highest Australian intergovernmental body (Commonwealth of Australia, 2012). COAG agreed in March 2008 to the establishment of targets for Indigenous reform through the Closing the Gap reform agenda (Council of Australian Governments, 2009). Halving the gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade is one of the six targets of Closing the Gap and it requires attention if Indigenous people are to attain a prosperous life.

Method

Using discourse analysis to study and examine the use of language as a qualitative tool (Robson, 2011) uncovered valuable and beneficial research from publicly accessible documents, such as EAs. Convenience sampling as a qualitative approach was chosen for this study as a technique that provides good accessibility to the sample (Marshall, 1996). The data generation and collection strategies have been opportunistic. The driving factor for convenience sampling was using easily and readily available EAs from the internet. Eight EAs, one from each state and territory, were selected from the NTEU website. Publicly accessible, the NTEU webpage is structured with EAs listed under each state and territory. While this selection process did not guarantee that all issues within all EAs would be explored, the convenience sampling approach provided an indication of some key issues addressed by EAs across Australia impacting on Indigenous staff (Berg, 2004).

Several terms relevant to this paper are defined here. 'Cultural leave', or leave taken for cultural purposes, is defined differently in each of the EAs studied. It is available for cultural and ceremonial obligations (sometimes defined for use with activities at NAIDOC – the National Aboriginal and Islander Day of Observance Committee) or other significant cultural events to comply with traditional customs, laws or official celebrations and activities. 'Indigenous or Aboriginal Employment Strategy' is defined as a strategy to increase workplace participation the Indigenous people. 'Language allowance' is paid to an Indigenous employee if they are required by their employer to use an Indigenous language in the course of their employment. NAIDOC is usually celebrated in the

first week of July, however, some NAIDOC activities coincide with other organisations' calendars. Reconciliation within EAs is a commitment to recognition, healing and helping all Australians move forward with a better understanding of the past and how the past affects the lives of Indigenous people today. A Reconciliation Action Plan (RAP) can assist businesses and companies to formulate plans to action what they will do within their capabilities to bring Indigenous and non-Indigenous people together in the spirit of reconciliation in Australia.

Coding procedures adopted for this study were based on content analysis. These were used to scrutinise information, content and material from the selected sample (Neuman, 2000). Using summative content analysis, key words from each of the eight documents were counted and compared. The primary context was then understood (Hsieh & Shannon, 2005). After scanning and examining the eight EAs, searches were conducted within each document to identify the areas of the EA that would separate specific information for Indigenous staff. A brief scanning of the documents revealed sections allocated to Indigenous employment. Key words were noted from these areas and used to quickly find relevant information. The key words searched included 'Aboriginal', 'Indigenous', 'culture', 'cultural', 'reconciliation' and 'language'. After searching the key words, sections were identified and similar patterns found. All the EAs searched included sections dedicated to Indigenous employment strategies and leave arrangements. Leave arrangements for cultural purposes were included under areas such as personal, additional, ceremonial and special leave. The collection of key words, themes and areas obtained from the EA documents was a valuable aid in formulating a research question (Yegidis & Weinbach, 2006).

Results

A key finding that emerged from the EAs examined was a lack of consistency and clarity within the Round 5 documents to include Indigenous people's representation. It is understandable that consistency varied in each EA as, under the Act (*Fair Work Act*, 2009), pattern bargaining is prohibited by bargaining representatives from modelling or using templates from other EAs. However, clear goals, such as employment targets, were not clearly defined in the EAs. Cultural leave, Indigenous employment strategies and RAPs emerged as the significant key themes in this study. Although the Indigenous language allowance was not supported by the majority, it presented as a theme to be explored. The similarities and differences of eight Australian university Round 5 EAs are depicted in Table 1.

Table 1 Similarities and differences of eight Australian university Round 5 Enterprise Agreements [EAs]

| | Cultural Leave | Indigenous Employment Strategy (IES) Staffing Targets | Language Allowance | Reconciliation Action Plan (RAP) |
|--|---|---|---------------------|--------------------------------------|
| James Cook University (Qld) 2010–2012 | 5 days paid + exceptions | Yes, 7. 4% | No | No |
| University of Ballarat (Vic) 2010–2012 | 5 days paid, 10 days unpaid | Yes, N=15 | No | Yes |
| University of Tasmania (Tas) 2010–2012 | 2 days paid, 1 day paid NAIDOC + exceptions | Yes, N=20 by 2010 (IES) | No | No RAP, but reconciliation mentioned |
| University of South Australia (SA) 2011–2013 | 2 days paid, 10 hours paid NAIDOC | Yes, 2% | Yes, max \$3489 p/a | No RAP, but reconciliation mentioned |
| Charles Sturt University (NSW) 2010–2012 | 10 days paid NAIDOC + exceptions | Yes 3% by 2011 (IES) | No | No |
| Charles Darwin University (NT) 2011–2013 | 5 days paid, 10 days unpaid | Yes* | No | No |
| Australian National University (ACT) 2010–2012 | 10-25 days paid | Yes, 2. 2% | No | No |
| Curtin University (WA) 2009–2012 | 5 days paid, 2 days unpaid | Yes, 50 full-time employees by 2012 (IES) | No | No |

*The proportion of Indigenous staff at the University shall equal or exceed the proportion of Indigenous Higher Education students; The proportion of Indigenous staff should not reduce (Charles Darwin University, 2011).

Cultural leave

In the eight EAs cultural leave requirements were named and described in different ways. The University of Tasmania EA states that 'an employee shall be entitled to use accrued annual leave or long service leave to follow and practice [sic] the requirements of cultural, spiritual or religious beliefs to which they adhere' (2010). Australian National University stipulates that 'personal leave is provided for cultural circumstances'. Australian National University's Indigenous staff are allowed between ten and 25 days on full pay for cultural leave. Taking cultural leave was prescriptive with long advance notice requirements for Australian National University Indigenous staff (2010). The aforementioned requires four weeks' notice to be given for cultural leave. However giving notice to meet traditional law, custom, cultural and family obligations, or to participate in ceremonial, cultural and religious activities cannot always be planned, especially if, for example, the need for it arises out of a family tragedy.

Most EAs examined for this study state that every effort should be made to advise as soon as practicable where personal leave is taken for cultural or ceremonial purposes. Cultural leave was not always named or stated as such. In three cases it was specified as personal leave, personal and carer's leave, and non-accruing personal leave (Australian National University, 2010; Curtin University of Technology, 2010; James Cook University, 2010). Cul-

tural leave was specifically named as such by three EAs (Charles Darwin University, 2011; University of South Australia, 2011; University of Tasmania, 2010). In the remaining two cases it was described as carer's leave and special leave (University of Ballarat, 2010; Charles Sturt University, 2010).

Indigenous Employment Strategy

All EAs in this study included dedicated information detailing an Indigenous Employment Strategy, Aboriginal Employment Strategy or Indigenous Employment Attraction and Retention Strategy (Australian National University, 2010; Charles Darwin University, 2011; Charles Sturt University, 2010; Curtin University of Technology, 2010; James Cook University, 2010; University of Ballarat, 2010; University of South Australia, 2011; University of Tasmania, 2010). Charles Darwin University's Indigenous employment target indicated a percentage of equivalent full time staff (2011); other universities' targets were indicated by a finite number and recorded, such as 15 in University of Ballarat (2010).

Charles Darwin University's Indigenous Employment Strategy target indicated 'the proportion of Indigenous staff shall equal or exceed the proportion of Indigenous Higher Education students' (Charles Darwin University, 2011). Charles Sturt University's equity section described one of the university's aims as being

to 'increase the overall representation of Indigenous employees as a proportion of equivalent full time staff, with the aim of achieving the employment targets of the Indigenous Employment Strategy'.

Charles Sturt University (CSU) did not prescribe a target for Indigenous staffing levels in its EA. Although not specified in the collective agreement, its target was detailed in the CSU Indigenous Employment Strategy (2010, 2012). Two per cent Indigenous staff was University of South Australia's target (University of South Australia, 2011). James Cook University's (JCU) Indigenous staff target was 7.4 per cent (James Cook University, 2010). However, 4,983 staff were employed by JCU in 2011 (James Cook University, 2012). For JCU to reach its Indigenous employment target they would have needed to employ 368 Indigenous staff. According to the Commonwealth Department of Industry data, in 2011 JCU had 45 Indigenous staff (2011).

The Indigenous staffing targets varied from as low as 2 per cent to a high of 7.4 per cent, with an indefinite proportion at Charles Darwin

University, whose target is to have equal percentages of Indigenous staff and students (Charles Darwin University, 2011; James Cook University, 2010; University of Ballarat, 2010; University of South Australia, 2011). Three EAs did not indicate a designated target, but the same three indicated that their targets were contained within other strategic documents (Charles Sturt University, 2010, 2012; Curtin University of Technology, 2007, 2010; University of Tasmania, 2008, 2010). The University of Ballarat's vice-chancellor biennially determines an overall target for the university's Aboriginal and Torres Strait Islander Employment Procedure (Federation University Australia, 2011).

Language allowance

An Indigenous language allowance was supported by only one of the universities explored in this study. University of South Australia's allowance to Indigenous staff who are required to use an Indigenous language as part of their employment are renumerated between \$2091 and \$3489 per annum (2011). If increasing Indigenous scholarship in tertiary institutions is to be achieved, tangible recognition for Indigenous proficiencies needs to be acknowledged.

Reconciliation Action Plan

Indigenous reconciliation was commonly added as an addendum. Reconciliation was not acknowledged in five

EAs, and only three mentioned reconciliation in their agreement. University of Ballarat (UB) indicated that their RAP is its key Indigenous policy document and includes reconciliation as part of its operational aims of the agreement and linked it to its Indigenous Employment Strategy. University of Ballarat stated in its EA that it 'share[s] the vision of Reconciliation Australia for recognising the special place and culture of Aboriginal and Torres Strait Islander peoples as the First Australians ...' (University of Ballarat, 2010).

Universities of South Australia and Tasmania made a commitment in their EAs to reconcile and partner with Indigenous people (University of South Australia, 2011; University of Tasmania, 2010). The EAs of the remaining five institutions made no mention of reconciliation or RAPs with Indigenous people (Australian National University, 2010; Charles Darwin University, 2011; Charles Sturt University, 2010; Curtin University of Technology, 2010; James Cook University, 2010); however, RAPs may exist independently of EAs. RAPs can be useful in

setting tangible goals that work towards reconciliation across the institution. While the NTEU encourages the development and implementation of RAPs, they are not enforceable outside EAs. The NTEU branch at University of Ballarat specified that when RAPs are being developed, broad community engagement and consultation that use meaningful, respectful and inclusive processes must occur (2008).

Discussion

Inclusive and respectful cultural policies that are aligned with reconciliation and included in EAs will reduce Indigenous disadvantage. A flexible work arrangement that will enable Indigenous employees to meet their cultural obligations is imperative to overcoming Indigenous disadvantage (Gray, Hunter & Lohoar, 2012). Having the freedom to express cultural identity and practices is an important social determinant for Indigenous people's health and wellbeing (Henderson *et al.*, 2007). The effects on health of culture, income, education and employment are interdependent (Mowbray, 2007). Having access to cultural leave is a benefit; applying for it four weeks in advance to access it for family, sickness, funerals or unexpected cultural business is not always possible for Indigenous employees. Once respect for and support of Indigenous

Australians' cultural obligations is acknowledged, a process of justice, recognition and healing can begin.

Mention of an Indigenous Employment Strategy was included in each of the eight EAs examined, but on close scrutiny, each revealed very different targets and measures. An Indigenous Employment Strategy can be a dynamic tool that stimulates better prospects and jobs for Indigenous people and sustains their commitment (Australian Chamber of Industry and Commerce, 2005). It might be more feasible to use a percentage target than numeric targets as percentage targets can be aligned with Indigenous populations or, to a lesser degree, to Indigenous enrolments. A problem might then be created if enrolments are not sustained, leading to Indigenous staffing requirements not being sustained. The myriad measures used to identify Indigenous Employment Strategy targets could indicate of a lack of common understanding and agreement, and any university EA without an Indigenous Employment Strategy target makes it difficult to make comparisons. Indigenous Employment Strategies are a sound foundation to creating organisational changes towards the successful achievement and maintenance of employment opportunities among Indigenous Australians (Parish, 2002).

Reconciliation Australia introduced RAPs in 2006 to help employers advance reconciliation between Indigenous and non-Indigenous Australians. Since then, more than 358 RAPs have been incorporated in businesses' organisational plans across Australia (Reconciliation Australia, 2012). Linking key Indigenous policy documents with EAs should provide transparency and assurance if institutions are serious and committed to reconciling with Indigenous Australians.

Conclusion

EAs can enhance employment opportunities for Indigenous people by recognising culture as an important determinant. Culture, income, education and employment are reliant on each other for people's lives to prosper. In order to be more inclusive of Indigenous people's cultural needs, Australian universities need to implement improvements to Close the Gap on Indigenous employment, and to commit to reconciliation. Indigenous employment strategies do exist and are embedded in all the EAs within this study, but what is not known is whether the targets that are being proposed are being met and, more importantly, being sustained. If they are not being sustained, will the unions take action by declaring disputes? Reconciliation action plans have the ability to advocate institutional and organisational action for change. Reconciliation action

plans should go beyond action plans to be embedded into policy documents and EAs. Nuances and differences between cultures that are included in EAs can add to the vision for a more reconciled country. They can also help to bring important institutional and organisational change to universities.

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